



COMMON PLEAS COURT
05 MAR 17 PM 3:36

FILED
KATHY FORTNEY
MEDINA COUNTY
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
MEDINA COUNTY, OHIO

Dean Holman

Plaintiff

v.

Steven A. Bozsik

Defendant

CASE NO. 04 CIV 0286

Judge James L. Kimbler

Judgment Entry with Instructions
to the Clerk

This case is before the Court on the parties' cross motions for summary judgment. Based upon the evidence allowable pursuant to Civ. R. 56(C), the Court finds there are no genuine issues of material fact upon which reasonable minds could differ. Plaintiff is entitled to judgment as a matter of law. Accordingly, Plaintiff's Motion for Summary Judgment is hereby granted and Defendant's Motion for Summary Judgment is denied.

Statement of the Case

On March 3, 2004, Plaintiff, who is the Medina County Prosecutor, filed a complaint seeking to have Defendant, Steven A. Bozsik, an inmate, declared a vexatious litigator as defined in R.C. §2323.52(A)(3).

Cross Motions for Summary Judgment were filed. Plaintiff's motion set forth

MEDINA COUNTY COURT OF COMMON PLEAS-STATE OF OHIO, MEDINA COUNTY, S.S.

I hereby certify that this is a true copy of the original on file in said court.

Witness my hand and the seal of said court at Medina, Ohio this 17th

day of April 2005 Kathy Fortney, Clerk of Courts

By Kathy Fortney, Clerk Deputy

four cases from the Medina County Common Pleas Court outlining Defendant's involvement, one from the Wayne County Common Pleas Court and a Mandamus action filed directly in the Ninth District Court of Appeals. Exhibits in the form of judgment entries and docket sheets were attached, supporting Plaintiff's position.

In his brief in opposition to Plaintiff's Motion for Summary Judgment, Defendant contends that Plaintiff was required to have filed the vexatious litigator claim as a compulsory counterclaim in Defendant's action in the Wayne County Common Pleas Court proceeding titled *Boszik v. Ross et.al.* The Court finds that Defendant's argument is not well taken.

Turning first to Defendant's motion, the Court finds that Plaintiff's claim in this case was *not* a compulsory counterclaim in the Wayne County case wherein Mr. Boszik sued Kevin Ross, Warren Walter, James Elam, David Burkhart, and Darrell Burkhart. Plaintiff was never named a party in the Wayne County lawsuit. Civil Rule 13 requires a party to bring as a counterclaim any claim the pleader has against an *opposing party*. Therefore Civil Rule 13 is inapplicable under the facts of this case. Moreover, even assuming Holman had been a party, the cause of action in this case does not arise out of the facts complained of by Defendant in the Wayne County case, but rather the repeated filing of alleged frivolous actions, which is distinctly different.

In addition, the Court finds that the clear language of R.C. §2323.52(B) authorizes independent actions for a declaration of vexatious litigator, separate from the causes allegedly giving rise to the vexatious conduct.

Turning to Plaintiff's motion for summary judgment, it is necessary to analyze whether Plaintiff sufficiently established the criteria to declare Defendant a vexatious

litigator. The Court has reviewed the pleadings of the civil cases incorporated as evidence in Plaintiff's Motion for Summary Judgment to determine whether Defendant's conduct satisfies either of the following: a) The conduct obviously serves merely to harass or maliciously injure another party to the civil action or b) The conduct is not warranted under existing law, and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law.

The court begins with Defendant's petition to vacate or set aside sentence in Case No. 99 CR 0446, a post conviction proceeding. This seventy-three (73) page petition raised numerous contentions, all of which were overruled. The Court found "The legal claims set forth in the complaint were not warranted under existing law, could not be supported by a good faith argument for an extension, modification, or reversal of existing law, or cannot be supported by a good faith argument for the establishment of a new law."

A review of Medina County Court case number 03 CIV 0509, which was initiated on April 15, 2003, reflects that Defendant raised the same issues he had previously raised without effect in his post conviction motion to vacate or set aside sentence in Case No. 99 CR 0446, without any additional facts or new legal basis. To find that said claims are now warranted under existing law, or could be supported by a good faith argument for the establishment of new law would directly controvert this court's prior ruling. Furthermore, that case was declared frivolous or malicious under R.C. §2969.24. After the case had been dismissed, Defendant persisted and filed a motion for reconsideration pursuant to Civil Rule 60. This motion was denied for failure to demonstrate any justification for relief.

On June 12, 2003, Defendant filed a complaint for Permanent Injunction of Harassment against the entire Medina County Prosecutor's office which was dismissed as frivolous or malicious pursuant to R.C.2969.24.

On July 29, 2003 Defendant filed a Declaratory Judgment action against County Coroner Dr. Neil Grabenstetter in Medina County Court Case No. 03 CIV 0983. In that case Defendant sought to change the time of death on the death certificate of Carol Bozsik, for whom the Defendant was convicted of Aggravated Murder. This case was likewise dismissed as frivolous or malicious.

The Ninth District Court of Appeals denied Defendant's request for writ of mandamus against the Medina County Commissioners and Sheriff's Office. In that case Mr. Bozsik sought to force the appointment of substitute counsel to handle his complaints of wrongdoing against the witnesses for the state at his criminal trial. The Court of Appeals denied the writ, and found it was based on the same allegations Mr. Bozsik had repeatedly raised in the past.

The Defendant's Declaratory Judgment action filed in Wayne County sought a determination of criminal wrong doing taking place in Medina County, against the state witnesses in his criminal trial. Again, this Court found that Mr. Bozsik's case was based on claims already repeatedly denied, without any legal basis for the reconsideration. This case clearly showed Defendant's vexatious conduct.

Based on the foregoing, the Court finds that Defendant has engaged in a pattern of habitual and persistent vexatious conduct.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. Defendant's Motion for Summary Judgment is denied.
2. Plaintiff's Motion for Summary Judgment is granted.
3. Defendant is a vexatious litigator as defined in R.C. §2323.52(A)(3).
4. Unless Defendant first obtains leave of court, Defendant is prohibited from:
 - a) Instituting any legal proceedings in the court of claims, or in a court of common pleas, municipal court, or county court;
 - b) Continuing any legal proceedings that he has instituted in any of the aforesaid courts prior to the entry of this Order; and
 - c) Making any application, other than an application for leave to proceed under R.C.2323.52(F)(1), in any legal proceeding instituted by the Defendant or another person in the court of claims, or in a court of common pleas, municipal court, or county court

Costs to Defendant.



Judge James L. Kimbler

INSTRUCTIONS TO THE CLERK

Pursuant to Civil Rule 58, the Clerk is hereby directed to serve upon the

following parties notice of this order and its date of entry upon the journal:

William Thorne
Medina County Prosecutor's Office
72 Public Square, Third Floor
Medina, Ohio 44256

Steven A. Bozsik 389-250
Mansfield Correctional Institution
1150 N. Main Street
P. O. Box 788
Mansfield, Ohio 44901

Copies were mailed by the Clerk of Court on _____.

DEPUTY CLERK OF COURT